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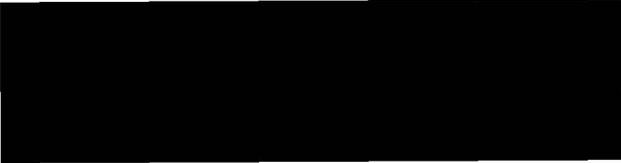


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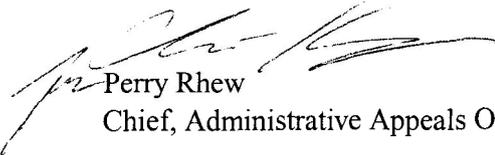
IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:


INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santa Ana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen husband.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 7, 2007.

On appeal, counsel for the applicant contends that the applicant's husband will suffer extreme hardship if the applicant is compelled to depart the United States. *Brief from Counsel*, dated May 23, 2007.

The record contains briefs from counsel; reports on conditions in the Philippines; statements from the applicant, the applicant's husband, and the applicant's husband's relatives; birth and naturalization certificates for the applicant's husband's family members; copies of tax records for the applicant and her husband; copies of a lease and rent checks for the applicant and her husband; copies of the applicant's husband's medical insurance and treatment records; a copy of the applicant's marriage certificate, and; information and documentation relating to the applicant's entry to the United States using a passport and visa belonging to another individual. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides, in pertinent part, that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien[.]

The record reflects that on May 27, 1992 the applicant applied for admission to the United States using a Philippines passport and B-2 visa that belonged to another individual. Thus, the applicant attempted to procure entry by fraud and misrepresentation. Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. The applicant does not contest her inadmissibility on appeal.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences upon deportation is not a basis for a waiver under section 212(i) of the Act; the only relevant hardship in the present case is hardship suffered by the applicant's husband. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (Citations omitted).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant's husband would possibly remain in the United States if the applicant departs. Separation of family will be carefully considered in the assessment of hardship factors in the present case.

On appeal, counsel asserts that the applicant's husband will suffer extreme hardship if the applicant is compelled to depart the United States. *Brief from Counsel*, dated May 23, 2007. Counsel asserts that the field office director failed to consider all factors of hardship to the applicant's husband. *Id.* at 2. Counsel explains that the applicant's husband has 19 family members in the United States, including six adult children and their families with whom the applicant and her husband are close. *Id.* at 4. Counsel describes in detail the contact that the applicant and her husband have with her

husband's family, including weekly visits and the fact that the applicant contributes significantly to the care of their grandchildren. *Id.* at 4-5.

Counsel contends that the applicant's husband will suffer emotional hardship if he is separated from the applicant. *Id.* at 5. Counsel notes that the applicant has been married to her husband for over 10 years, and that they depend on each other for support. *Id.* Counsel states that the applicant would be unable to visit with her husband regularly should she relocate to the Philippines due to financial constraints. *Id.* at 6.

Counsel asserts that the applicant's husband will experience economic hardship due to the applicant's departure. *Id.* Counsel indicates that the applicant's husband is retiring from his position as a production assistant and he will no longer be able to earn income to support himself, thus he will rely on the applicant's income. *Id.* Counsel explains that the applicant's household income is decreasing by more than half, as the applicant earns approximately \$14,000 per year while her husband earned approximately \$18,700 per year. *Id.* Counsel asserts that the applicant's husband would have no place to live without the applicant's support, as his family members have no room for him in their three residences. *Id.*

Counsel contends that the applicant's husband would be unable to support himself in the Philippines due to the poor economy and the high probability that he would be unable to find employment. *Id.* Counsel explains that wages in the Philippines are not sufficient to support residing in the United States. *Id.*

Counsel states that the applicant's husband suffers from health problems, and he relies on medical insurance to meet his needs. *Id.* Counsel contends that the applicant's husband would be unable to afford proper medical care in the Philippines due to low wages and the poor economy. *Id.*

Counsel provides that conditions in the Philippines are dangerous, as there are threats of terrorist attacks. *Id.* Counsel asserts that the applicant's husband would have to choose between his wife and his personal safety should she relocate to the Philippines. *Id.*

The applicant's husband states that that he, his children, and his grandchildren will experience extreme hardship if the applicant is compelled to depart the United States. *Statement from the Applicant's Husband*, dated March 15, 2007. He explains that he is very close with his family in the United States, and that six of his adult children (all U.S. citizens or lawful permanent residents) reside near him with their families. *Id.* at 1. He describes his and the applicant's interaction with his family to show that the applicant is very involved with his children and helps care for his nine U.S. citizen grandchildren. *Id.* at 1-3.

The applicant's husband indicates that he resigned from his employment and he relies on the applicant for economic support. *Id.* at 3. He notes that he is 65 years old and he has health problems that interfere with his ability to work. *Id.* at 3-4. He states that the applicant has a stable income, as she has worked as a food server in a Chinese restaurant for 13 years. *Id.* at 4.

The applicant's husband explains that in April 2006 he was hospitalized in intensive care for four days due to rectal bleeding, and that the applicant took care of him. *Id.* He indicates that his health

insurance covered his treatment at a cost of \$45,000, and that he will require it for future healthcare. *Id.* He states that he would face hardship if he relocates to the Philippines as he would lack access to sufficient medical care due to the loss of his insurance. *Id.* He explains that he is presently taking various medications and that he must stay in contact with his doctor to be monitored. *Id.*

The applicant provided statements from her husband's children and grandchildren in which they attest that the applicant is very close with her husband, and that he is much happier since they married in 1996. They indicate that the applicant cared for her husband when he was hospitalized. They note that the applicant is an integral part of their family, and that she helps everyone.

The applicant submitted evidence of her husband's medical insurance, including membership in a Blue Cross Health Maintenance Organization (HMO) and Medicare. The applicant submitted invoices to show that her husband incurred \$29,425 and \$3,500 in medical bills in May 2006 that were covered by his insurance. The applicant provided a letter from a physician who attested that her husband is being evaluated for medical conditions and that he should avoid lifting more than 15 pounds as well as prolonged sitting and standing. *Letter from* [REDACTED] dated February 23, 2007. The applicant provided a referral form that shows that her husband was referred for physical therapy due to low back pain on February 23, 2007. The applicant submitted copies of four prescriptions for her husband dated in 2006 and 2007.

Upon review, the applicant has established that her husband will experience extreme hardship if the present waiver application is denied. The applicant has shown that her husband will suffer extreme hardship if he relocates to the Philippines. The applicant's husband has extensive family ties in the United States, including six of his seven adult children and numerous grandchildren. The applicant has submitted clear explanation to show that she and her husband spend significant time with their extended family in the United States, and that her husband would suffer significant emotional consequences should he be separated from them.

The record supports that the applicant's husband has experienced health problems for which he has received costly medical treatment. The record shows that he has medical insurance in the United States that has covered his healthcare expenses. At the time of filing the appeal, the applicant's husband was under evaluation for health conditions and his physician advised against certain physical activity. The applicant's husband would likely face fewer employment options in the Philippines due to his present age and physical limitations. Lack of access to employment would impact his ability to fund his healthcare needs, which would likely have a negative impact on his health. It is unclear whether he would continue to have his current medical coverage, or whether such coverage would assist him in the Philippines. However, the applicant has shown by a preponderance of the evidence that relocating to the Philippines would likely have a negative impact on her husband's health.

The applicant and her husband would face economic challenges in the Philippines, including meeting the expenses associated with relocating and the need to secure employment. As noted above, the present physical limitations of the applicant's husband would impact his access to employment. While the applicant has not presented evidence to show that she and her husband would be unable to meet their basic expenses, the AAO acknowledges that they would likely face economic challenges that would contribute to her husband's hardship.

The Philippines has experienced security issues related to terrorist activity, and the applicant's husband has some concern for his personal safety. *See Travel Warning (Philippines)*, United States Department of State, Bureau of Consular Affairs, dated September 17, 2009. While the applicant has not shown that her husband would reside in an area of particular concern or that he would be targeted for harm, the AAO acknowledges that the potential for harm in the Philippines would contribute to the applicant's husband's emotional hardship should he relocate there.

Based on the foregoing, the applicant has shown by a preponderance of the evidence that her husband would experience extreme hardship should he relocate to the Philippines, largely due to his present health condition, lack of access to health care services in the Philippines, and separation from his extensive family in the United States.

The applicant has also submitted sufficient evidence to show that her husband would experience extreme hardship should she return to the Philippines and he remain. The applicant has shown that she and her husband are part of a close extended family in the United States, and that she serves as a matriarchal figure for her husband's children and grandchildren. The applicant has been married to her husband for approximately 13 years and they have a close bond. The applicant has cared for her husband during periods of his health complications. It is evident that the applicant's husband would endure substantial emotional hardship should he be separated from the applicant.

As discussed above, the record shows that the applicant's husband is under advisement from his physician to significantly limit the amount of weight he lifts, and to avoid prolonged sitting and standing. The applicant's husband resigned from his employment due to his physical condition. The applicant's husband states that he relies on the applicant for economic support. While the applicant has not shown that her husband is unable to engage in any employment, the record shows that his physical condition would limit his options. It is likely that the applicant's husband would experience economic hardship should the applicant relocate to the Philippines and he remain due to the loss of her financial contribution to the household.

As discussed above, the applicant's husband has experienced health issues that have required significant medical care. He explained that the applicant "took better care of [him] than the nurses" during his hospitalization. While the applicant has not shown that her husband presently relies on her for assistance with his health needs, the AAO acknowledges that the applicant's presence is a comfort to her husband as he faces health challenges. The applicant's husband's health status is a distinguishing factor in the present case. The applicant has shown by a preponderance of the evidence that separating her husband from her would cause greater emotional hardship than that ordinarily experienced when spouses live apart due to inadmissibility.

Considering all elements of hardship to the applicant's husband in aggregate, the applicant has established that her husband will experience extreme hardship should the present waiver application be denied. Thus, the applicant has shown by a preponderance of the evidence that denial of the present waiver application will result in extreme hardship to her U.S. citizen husband, as required by section 212(i)(1) of the Act.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme

hardship and eligibility for a waiver of inadmissibility does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General (now Secretary of the Department of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. *See Matter of Cervantes-Gonzalez, supra*, at 12.

The negative factors in this case consist of the following:

The applicant entered the United States using fraud and misrepresentation. The record suggests that applicant remained in the United States for a lengthy duration without a legal immigration status, and she engaged in unauthorized employment.

The positive factors in this case include:

The record does not reflect that the applicant has been convicted a crime; the applicant's U.S. citizen husband would experience extreme hardship if she is prohibited from remaining in the United States; the applicant has paid taxes in the United States; the applicant has been a significant help to her husband's extended family including many U.S. citizens, and; the applicant has provided vital support to her husband during serious health problems.

While the applicant's violation of U.S. immigration law cannot be condoned, the positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i)(1) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden that she merits approval of her application.

ORDER: The appeal is sustained.